(2) THE MADRAS HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS (AMENDMENT) BILL, 1954.

THE HON. SRI B. PARAMESWARAN :—" Mr. Speaker, Sir, I beg to introduce the Madras Hindu Religious and Charitable Endowments (Amendment) Bill[a], 1954 and move—

'*That the concurrence of the Legislative Council be obtained for setting up a Joint Select Committee of both the Houses consisting of 23 Members (15 Members of the Assembly and 8 Members of the Council) to consider the Bill and that the following Members of this House be selected to serve on such a Joint Select Committee.*'

I shall give the names after the concurrence of the Council is obtained.

11-20 a.m. " In its judgment, dated 13th December 1951, a Division Bench of the Madras High Court allowed a petition presented by the head of the Shirur Math in the South Kanara district under Article 226 of the Constitution and directed the issue of a writ of prohibition against the settlement of the scheme connected with the Math initiated under the Madras Hindu Religious Endowments Act, 1927, subsequently amended and re-enacted as the Madras Hindu Religious and Charitable Endowments Act, 1951. The main contention raised in the petition was that having regard to the fundamental rights guaranteed under the Constitution in matters of religion and religious institutions belonging to particular religious denominations, the law regulating the framing of a scheme interfering with the management of the Math and its affairs by the Madhathipathi conflicted with the provisions of Articles 19 (1) (*a*) and 26 of the Constitution. On the constitutional issues thus raised in the petition, the High Court pronounced quite a number of sections of the Act to be *ultra vires* by reason of their being in conflict with the fundamental rights guaranteed under Articles 19 (1) (*f*), 25, 26 and 27 of the Constitution. The matter was taken in appeal on behalf of the Government to the Supreme Court of India. The Supreme Court in its judgment, dated the 16th March 1954, dismissed the appeal and agreeing with the Madras High Court, declared sections 21, 30 (2), 31, 35, 56 and 63 to 69 to be invalid as they are in conflict with the fundamental rights and section 76 (1) of the Act to be void as it is beyond the legislative competence of the Madras State Legislature.

" The Government bring forward the present Amendment Bill with a view to remedy the situation created by the Supreme Court's judgment and to amend the Act in conformity with the provisions of the Constitution. I shall now proceed to explain briefly the scope of this amending legislation.

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"Section 21 of the existing Act empowers the Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Deputy and Assistant Commissioners and other officers authorized by the Commissioner or the Area Committee to enter the premises of any religious institution or place of worship in the discharge of their duties under the Act. The Supreme Court has held that section 21, which confers on officers' unregulated and unrestricted right of entry into any part of religious institutions including the inner sanctuary and that too at all hours irrespective of any interference that might be caused to the due observance of the rights and ceremonies in them and without due notice to the trustees, contravenes Articles 25 and 26 of the Constitution. Clause 3 of the Bill, therefore, following the directions given by the Supreme Court, provides for notice being given to trustee and for the usages and practices of the institution being observed by an officer in making an entry. The amendment incidentally enables the Commissioner to nominate, if necessary, any servant, including an 'archaka' of a religious institution, to make an entry into any part of a temple or math including the Sanctum Sanctorum.

"Section 23 of the existing Act imposes a duty upon the trustee to obey all lawful orders under the Act issued by the Commissioner, the Deputy or Assistant Commissioner or the Area Committee. Clause 4 of the Bill makes an addition to this section which requires that the authorities mentioned shall, while exercising their powers of control and superintendence, as far as practicable, observe, the forms and ceremonies or usages appropriate to the religious institution or math concerned.

"Sub-section (1) of section 30 of the Act declares the right of the trustee of a religious institution to incur expenditure, out of the funds in his charge, for securing the health, safety or convenience of disciples and pilgrims and for the training of archakas, adhyapakas, etc. Sub-section (2) of section 30, however, requires that in incurring the expenditure the trustee shall be guided by any general or special instructions which the Commissioner or the Area Committee may give. The Supreme Court has held that this provision constitutes an unreasonable restriction on the right of the trustee. Clause 5 of the Bill therefore deletes sub-section (2) of section 30.

"According to the Supreme Court the objection raised in respect of section 30 (2) will apply also to section 31 which enables the trustee to spend the surplus income of the institution for the purposes specified in section 59 (1) with the previous permission of the Deputy Commissioner. The Supreme Court has held that the stipulation that the surplus income can be spent only for the purposes specified in section 59 (1) and that too with the permission of Deputy Commissioner places a burdensome restriction upon the property rights of the trustee sanctioned by usage and has the effect of impairing his dignity and efficiency as the head of the

institution. The existing section 31 is, therefore, being deleted to meet the objections raised by the Supreme Court and a new section 31 is being substituted by clause 6 of the Bill.

" On the analogy of section 47 of the Orissa Hindu Religious Endowments Act, 1939, which has been held to be valid by the Supreme Court, the new section 31 provides for the cypres application of surplus funds of endowments. Under this section the Commissioner can, after holding the necessary inquiry and after satisfying adequately the purposes of any institution and setting apart a sum sufficient for the repair and renovation of buildings connected with it, authorize the utilization of any surplus funds towards religious, educational or charitable purposes. The Commissioner can also create reserve funds for the institution out of the surplus income. Provision has also been made for the publication of the Commissioner's order under the section and for suit against the order within six months of its publication.

" Clause 7 of the Bill inserts two new sections 31-A and 31-B. New section 31-A provides for the validation of past appropriation of surplus funds made by the trustee under the existing section 31 with the permission of the Deputy Commissioner, and for the filing of a suit by any interested person (within a period of six months, from the commencement of the Amendment Act) against any such appropriation made by the trustee. New section 31-B provides for an appeal to the High Court against the order of the lower Court.

" Section 39 (2) of the Act provides that where an institution has both hereditary and non-hereditary trustee, the Commissioner can appoint non-hereditary trustees as and when vacancies occur. Clause 9 of the Bill meets the objection to section 39 (2) by the Madras High Court by providing that the Commissioner shall appoint non-hereditary trustees only in case of mismanagement and that too only after giving due notice to the hereditary trustees and after holding an inquiry.

" Section 52 of the Act specifies the grounds on which a suit can be filed for the removal of the trustee of a math or specific endowment. Clause 10 of the Bill provides for the filing of such suits on certain additional grounds, viz., waste of funds, adoption of devices to convert the income of the institution into pathakanika or leading a life inconsistent with the sanctity of the office.

" Section 55 of the Act has been held *ultra vires* in so far as it obliges heads of maths to maintain accounts of receipts and disbursements of pathakanika and to spend pathakanika on purposes connected with the institution. Clause 11 of the Bill provides for the heads of maths maintaining accounts of receipts of pathakanika (but not of expenditure) and for their spending pathakanika in any manner authorized by the usage of the institution.

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" Both the Madras High Court and the Supreme Court have invalidated section 56 of the Act which empowers the Commissioner to require the trustee to appoint a manager for the administration of the secular affairs of the institution and in case of default to make the appointment himself. Clause 12 of the Bill deletes this section.

" Sections 63 to 69 of the Act provide for the notification by the Commissioner of religious institutions and for the appointment of Executive Officers for the better administration of the endowments of the institutions. The Supreme Court has held that these provisions are extremely drastic in character and has declared these to be void. Clause 13 of the Bill introduces a new section 62-A which makes sections 63 to 69 inapplicable to maths or other religious institutions having hereditary trustees with a beneficial interest in the income of the institution.

" Section 76 (1) of the Act provides for the payment of annual contributions to the Government by institutions not exceeding 5 per cent of their income for the services rendered by the Government. The Supreme Court has held that as these contributions are not earmarked or specified to defray the expenses incurred by the Government in performing the services they have to be treated as tax and not as fee and that consequently section 76 (1) is beyond the legislative competence of the State Legislature. Clause 17 therefore amends this section making the contributions payable to the Commissioner instead of to the Government.

" Clause 18 of the Bill (which introduces three new sections 80, 81 and 82) further provides for the appointment of the Commissioner to be a corporation sole, for the constitution of a fund to be called the Madras Hindu Religious and Charitable Endowments Administration Fund to which the contributions under section 76 (1) shall be credited and for vesting the Fund in the Commissioner. Provision is also made for the validation of contributions already collected by the Government.

" Sir, I have now briefly indicated the main purposes and features of this amending legislation. The judgments of the Madras High Court and the Supreme Court of India have practically rendered the existing Act largely inoperative and I am sure the House will certainly agree that this legislation is extremely important as well as urgent. I accordingly commend the Bill for consideration of the House."